Petition

81-487

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No. _____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

FRANK L. THOMAS, PETITIONER

V.

S. S. SCHWARTZ, RESPONDENT

Petition for a Writ of Certiorari to

The United States Court of Appeals for

The Ninth Circuit

Petitioner "pro se"

FRANK L. THOMAS, Petitioner
2080 East Hillcrest Drive
Thousand Oaks, California 91362

No Phone

QUESTION PRESENTED

1. Was Due Process accomplished in the ORDER DISMISSING AN ACTION IN THE DISTRICT COURT AND AFFIRMED BY A MEMORANDUM in the Appeals Court Ninth Circuit?

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Petition for a Writ of Certiorari to The United States Court of Appeals for The Ninth Circuit

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Petitioner requests that a Writ of Certiorari issue to review the MEMORANDUM of the United States Court of Appeals for the Ninth Circuit in this Case No. 80-5146.

CITATIONS TO OPINIONS

(Not Reported)

1. The Memorandum of the Court of Appeals is set forth in Appendix "B" of the Petition.

2. The Order of the United States District Court is set forth in Appendix "A" of the Petition.

JURISDICTION

1. The Court of Appeals entered the Memorandum on July 28, 1981 (App. "B", p-3).

STATUTES INVOLVED

Jurisdiction was gained over the subject matter in the Federal District Court under 28 U. S. Code section 1343, paragraphs 1, 2, 3 and 4, also 42 U. S. C. 1983, 1985, paragraphs 2 and 3 and section 1986. Jurisdiction also involved the Fourteenth Amendment of the Constitution of the U. S.

The Fifth Amendment to the U. S. Constitution provides in pertinent part:

> ...No person shall...be deprived of life, liberty, or property without due process of law.

The Respondent had a duty to notify of the hearing with the correct address, not by using the numbers 5080, instead of 2080 East Hillcrest Drive.

STATEMENT OF FACT

This Petition for Certiorari is sought "when a federal Court of Appeals has rendered a decision in conflict with the decision of another federal Court of Appeals on the same matter." The same matter is considered to be WISCONSIN v. CONSTANTINEAU, 400 U. S. 433.

FRANK L. THOMAS Petitioner filed an action against S. S. Schwartz Federal District Court No. 79 03644 LEW, upon appeal became No. 80-5146. The CAUSE OF ACTION WAS CONSPIRACY AND FRAUD IN DENIAL OF EQUAL PROTECTION OF THE LAWS. This Complaint was filed September 20, 1979.

The Complaint was dismissed October 22, 1979, without either of the parties being present.

The counsel for SCHWARTZ, JOHN FARRELL DEPUTY COUNTY COUNSEL for LOS ANGELES COUNTY used the address of 5080 E. Hillcrest to notify FRANK L. THOMAS of the hearing in which FRANK L. THOMAS WAS NOT PRESENT. As noted above my correct address is 2080 E. Hillcrest with a difference of 3 in the address the notice was sent.

After the Hearing before Circuit Judges, KENNEDY, FERGUSON and NORRIS, a MEMORANDUM was issued July 24, 1981, entered the same day and the dismissal in the U. S. District Court was affirmed. No notice was ever sent of the Dismissal in the U. S. District Court by either the officials of the Court or JOHN FARRELL. Thus a request for a Default Judgment was sought, at which time it was learned a Dismissal had already been granted.

DISCUSSION

A person should have a day in court. There

must be a Notice and Opportunity to be heard. This was denied this Petitioner, then a Plaintiff. The Appeals Court is substituting Case Law for Constitutional Law. It is stated the general rule is that a Notice is required before a Complaint is dismissed. My case is considered a futility and could not be cured by an amendment.

This case and others will be used in the future against me in Ventura County that I am a VEXATIOUS LITIGANT. It has been declared that I am a VEXATIOUS LITIGANT. It has been repeated against me in litigation and in other places. This is injurious to my reputation protected by the First Amendment of the Constitution of the U. S. I have run for the U. S. Senate in 1976, gathering almost 60,000 votes on the first try, without very much money to support me. In 1980, I got almost 200,000 votes and was incapacitated with a bad knee and was on crutches for part of the campaign, from an athletic knee. Now I

would like to run for governor in 1982. My reputation is at stake.

Reputation was at stake for CONSTANTINEAU, who had a propensity for drinking in Hartford, Wisconsin. So without a hearing in which she could defend herself, signs were posted stating that she would not be allowed to receive drinks by purchase or gift for one year. Procedural due process requires that an individual involved must be given a notice and opportunity to present her side of the matter. 302 F. Supp. at 864.

In my situation there was no notice or opportunity to defend. I cannot bring an original action in the Appeals Court of the U. S. so they should not be able to hear what should have been heard in the District Court, which was not heard. This case and the losing of them adds to my record, which will be used by those declaring me a VEXATIOUS LITIGANT. A VEXATIOUS LITIGANT is one who has lost a certain number of cases in a specified period of time, and there

is no probability he will prevail in the present litigation. This is what was given against me in writing that I could not prevail in the litigation and quote,

> "The plaintiff's Complaint is unintelligible and does not state a cause of action. It is well settled that a litigant does not have any cause of action against the opposing attorney other than malicious prosecution or abusive process."

On these few words I was declared a vexatious litigant and the cases I had going were dismissed. They did not furnish proof I could not prevail, other than the words given and quoted. Now the cases involved with SCHWARTZ may be used in declaring me a VEXATIOUS LITIGANT. I can bring actions in the State Courts but the defendants are allowed to ask me to post bond or money to provide for the defendants if I lose, which I cannot do. Thus I am barred from getting cases in the State Courts,

like CONSTANTINEAU was barred from getting her drinks without a hearing. And the non suits were handed to me, when a jury was paid for and in attendance, but gave no verdict.

Where the State attaches a badge of infamy to the citizen, due process comes into play. Wieman v. Updegraff, 344 U. S. 183, 191. The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle to our society. Anti-Fascist Committee v. McGrath, 341 U. S. 123, 168.

Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential. CONSTANTINEAU may have been the victim of an official's caprice. In my situation it has cost me in the thousands of dollars, because of the opposition by the attorneys and judges in this State of California. Hearings were had in the

declaring me a vexatious litigant, but I contended they were without proof I did not have a reasonable probability to prevail.

SCHWARTZ presided over the BOHAN trial, and I sued ATTORNEY BOHAN where BOHAN promised to re-open a Worker's Compensation Case before the Statute of Limitations would run. But the statute ran on the 10th, and on the 11th I received a SPECIAL DELIVERY letter saying BOHAN would not agree to re-open my Worker's Compensation Case. I was non suited in the Court of JUDGE SCHWARTZ, when a jury was sitting in attendance.

My witness ATTORNEY GREENE was giving evidence from my files about my injury in court, when JUDGE SCHWARTZ stopped the proceedings and recessed the court. In Chambers, GREENE volunteered to go on with the testimony, but JUDGE SCHWARTZ said it would not be heard, and I had to pay GREENE $500.00 for his services. The non suit was given after the suppression of the evidence.

CONCLUSION

There should be a right to the day in court and due process should be followed. The discussion in the Appeals Court about the failure of the notice having been received by this party should not be a substitute for the hearing in the District Court. Due Process was not followed. Case Law is not a good substitute for Constitutional Law. There has been futility in the courts and my treatment received by a domineering court, but maybe now it will be stopped. Thankyou for thinking.

PRAYER

WHEREFORE, The Court should grant the Petition for the issuance of the Writ of Certiorari, in order to stop these hearings without my presentation and the non suits.

Respectfully submitted, September 1, 1981

Frank F. Thomas

FRANK L. THOMAS, Petitioner NOT AN ATTORNEY
2080 East Hillcrest Drive
Thousand Oaks, California 91362

No Phone

APPENDIX

Exhibit	Description	Page
"A"	ORDER DISMISSING COMPLAINT AND ACTION IN THE UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA.	1
"B"	MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.	2

APPENDIX "A"

JOHN H. LARSON, County Counsel
JOHN P. FARRELL, Deputy County Counsel
648 Hall of Administration
500 West Temple Street
Los Angeles, California 90012

(213) 974-1886

Attorneys for Defendant

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FRANK L. THOMAS, Plaintiff, v. S. S. SCHWARTZ, Defendant.	CASE NO. CV 79 03644 LEW ORDER DISMISSING COMPLAINT AND ACTION

The motion of defendant S. S. SCHWARTZ to dismiss the complaint and action in the above-entitled matter having come on regularly for hearing in the above-entitled Court on October 22, 1979 at about 9:00 A.M. and there

APPENDIX "A" - continued

being no appearance for the parties, and the Court having read and considered the pleadings and motion, now, therefore:

IT IS ORDERED, ADJUDGED and DECREED that defendant S. S. SCHWARTZ's motion to dismiss the complaint and action is hereby granted and the complaint and action herein shall be and are hereby dismissed.

SO ORDERED

DATED: 28 Jan., 1981

/S/ LAUGHLIN E. WATERS, JUDGE

LAUGHLIN E. WATERS

APPENDIX "B"

UNITED STATES COURT OF APPEALS FILED

FOR THE NINTH CIRCUIT July 24, 1981 RICHARD H. DEANE CLERK, U. S. COURT OF APPEALS

FRANK L. THOMAS Plaintiff and Appellant vs. S. S. SCHWARTZ, Defendant and Appellee.	No. 80-5146 D. C. No. 79 -3644 LEW (TX) MEMORANDUM

Appeal from the United States District Court for the central district of California

Laughlin E. Waters, U. S. District Judge Presiding

Argued and Submitted: July 10, 1981

Before: KENNEDY, FERGUSON, and NORRIS, Circuit Judges.

While it is the general rule that notice is required before a complaint is dismissed, it is

APPENDIX "B" - continued

also recognized that where it is clear the complaint cannot be cured by an amendment we will affirm a dismissal, despite a deficiency in the notice procedure. California Diversified Promotions, Inc. v. Musick, 505 F. 2d 278, 280 (9th Cir. 1974; Worley v. California Dep't of Corrections, 432 F. 2d 769 (9th Cir. 1970). This is a necessary exception so that we are not required to remand for proceedings that will be a futility.

The instant case is one in which it is clear that the plaintiff cannot prevail upon the theory stated in the complaint or upon any appropriate amendments thereto. The judicial conduct complained of is within the jurisdiction of the state court and, therefore, squarely within the protection of judicial immunity afforded by Stump v. Sparkman, 435 U. S. 349, 356-57 (1978) see O'Neil v. City of Lake Oswego, 642 F. 2d 367 (9th Cir. 1981; Rankin v. Howard, 633 F. 2d 844

APPENDIX "B" - continued

(9th Cir. 1980). Amendments could not overcome the deficiency of this complaint, and the judgment of dismissal is, therefore, AFFIRMED.

AFFIDAVIT OF SERVICE

(Certificate of Service)

I certify that this date I have caused to be served 3 copies of the PETITION FOR WRIT OF CERTIORARI on JOHN FARRELL, DEPUTY COUNTY COUNSEL, 500 West Temple Street, Room 648, Los Angeles, California, 90012 by U. S. Postal Service, postage prepaid, from Thousand Oaks, California.

_____

FRANK L. THOMAS

Subscribed and affirmed before

me this _____day of

September 1981.

_____

Notary Public

My Commission expires on_____